

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PENDLETON DIVISION

GERARDO GARCIA GONZALEZ,

No. 2:17-CV-00508-SU

Petitioner,

v.

BRAD CAIN,

ORDER

Respondent.

HERNÁNDEZ, District Judge:

Magistrate Judge Sullivan issued a Findings and Recommendation [31] on April 20, 2018, in which she recommends the Court deny Petitioner's Petition for Writ of Habeas Corpus [2]. The matter is now before the Court pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc).

Petitioner raises a number of new claims in his objections. District courts have discretion to consider new evidence raised for the first time in an objection to a magistrate judge's

recommendation. *United States v. Howell*, 231 F.3d 615, 621 (9th Cir. 2000). The Court has reviewed these new claims and sees no need for further briefing. For the same reasons laid out in the Findings and Recommendation, Petitioner's new claims are procedurally defaulted. Petitioner's arguments for why this procedural default should be excused are unavailing. *See Coleman v. Thompson*, 501 U.S. 722, 752-54 (1991); *Martinez v. Ryan*, 566 U.S. 1, 14, 16 (2012) (ineffective assistance of post-conviction appellate counsel does not constitute cause to excuse default because there is no constitutional right to counsel in state post-conviction proceedings).

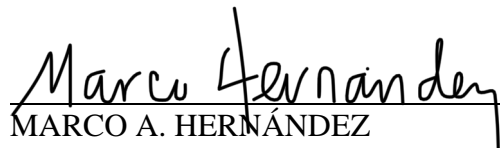
The Court has carefully considered Petitioner's objections and concludes that the objections do not provide a basis to modify the recommendation. The Court has also reviewed the pertinent portions of the record *de novo* and finds no error in the Magistrate Judge's Findings and Recommendation.

CONCLUSION

The Court adopts Magistrate Judge Sullivan's Findings and Recommendation [31]. Therefore, Petitioner's Petition for Writ of Habeas Corpus [2] is denied and this case is dismissed with prejudice. The Court declines to issue a Certificate of Appealability on the basis that Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

IT IS SO ORDERED.

DATED this 3 day of Feb, 2019.


MARCO A. HERNÁNDEZ
United States District Judge